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Attorneys for Plaintiff
 United States of America

UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,	)	Criminal Case No. 08CR1906-BEN
)	
Plaintiff,	)	DATE: July 21, 2008
	)	TIME: 2:00 p.m.
v.	)	Before Honorable Roger T. Benitez
)	
MIGUEL PEREZ-PIO,	)	UNITED STATES' MOTION FOR
	)	FINGERPRINT EXEMPLARS AND
Defendant(s).	)	RECIPROCAL DISCOVERY
)	
	)	TOGETHER WITH STATEMENT OF
	)	FACTS AND MEMORANDUM OF
	)	POINTS AND AUTHORITIES
)	
)	
)	

COMES NOW the plaintiff, UNITED STATES OF AMERICA, by and through its counsel, Karen P. Hewitt, United States Attorney, and William A. Hall, Jr., Assistant U.S. Attorney, and hereby files its Motion for Fingerprint Exemplars and Reciprocal Discovery in the above-referenced case. Said motions are based upon the files and records of this case together with the attached statement of facts and memorandum of points and authorities.

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DATED: July 7, 2008.

Respectfully submitted,

KAREN P. HEWITT
United States Attorney

s/ William A. Hall, Jr.
WILLIAM A. HALL, JR.
Assistant United States Attorney

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MIGUEL PEREZ-PIO,)	UNITED STATES' STATEMENT OF
)	FACTS AND MEMORANDUM OF
)	POINTS AND AUTHORITIES
Defendant(s).)	
_____)	

I

STATEMENT OF THE CASE

The Defendant, Miguel Perez-Pio (hereinafter "Defendant"), was charged by a grand jury on June 11, 2008, with violating 8 U.S.C. §§ 1326(a) and (b), deported alien found in the United States. Defendant was arraigned on the Indictment on June 12, 2008, and entered a plea of not guilty.

II

STATEMENT OF FACTS

Defendant was apprehended on April 25, 2008, by a United States Border Patrol Agent ("BPA") near Jamul, California. There, at approximately 1:45 p.m. that afternoon, a BPA

1 performing patrol duties responded to a sensor activation in an area located approximately twelve
2 miles east of the Otay Mesa, California Port of Entry, and approximately six miles north of the
3 international border between Mexico and the United States. Upon approaching the area, the BPA
4 noticed Defendant walking out of thick brush along a trail. The BPA identified himself and
5 conducted an immigration inspection, upon which Defendant freely admitted to being a citizen and
6 national of Mexico without any immigration documents allowing him to enter or to remain in the
7 United States legally.

8 Defendant was arrested and transported to the Brown Field Border Patrol Station for
9 processing. There, BPAs used Defendant's fingerprints to perform a computerized check of
10 Defendant's criminal and immigration history, revealing him to be a previously deported criminal
11 alien. In a post-Miranda statement, Defendant admitted that he is a citizen and national of Mexico
12 illegally present in the United States. He further admitted that he had been previously deported
13 from the United States, and had not applied or requested permission to re-enter the United States
14 legally. Defendant stated his intended destination was Escondido, California.

15 **B. DEFENDANT'S CRIMINAL AND IMMIGRATION HISTORY**

16 Preliminary criminal history reports show that Defendant has several felony illegal entry
17 and re-entry convictions in the U.S. District Court for the Southern District of California.
18 Defendant was convicted in 2002 of one count of 8 U.S.C. § 1326; he was sentenced to 60 days
19 custody, and then later to four months custody on a probation violation. Defendant was convicted
20 in 2004 of one count of 8 U.S.C. § 1326; he was sentenced to 15 months custody. Defendant was
21 convicted in 2007 of two counts of 8 U.S.C. § 1325; he was sentenced to 18 months custody.

22 Defendant was last removed to Mexico on May 9, 2008. He has been removed from the
23 United States on at least four prior occasions as well.

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III**UNITED STATES' MOTIONS****A. FINGERPRINT EXEMPLARS**

The United States requests that the Court order that Defendant make himself available for fingerprinting by the United States' fingerprint expert. See United States v. Ortiz-Hernandez, 427 F.3d 567, 576-77 (9th Cir. 2005) (government may have defendant fingerprinted and use criminal and immigration records in Section 1326 prosecution). Defendant's fingerprints are not testimonial evidence. See Schmerber v. California, 384 U.S. 757 (1966). Using identifying physical characteristics, such as fingerprints, does not violate Defendant's Fifth Amendment right against self-incrimination. United States v. DePalma, 414 F.2d 394, 397 (9th Cir. 1969); see also United States v. St. Onge, 676 F. Supp. 1041, 1043 (D. Mont. 1987).

B. RECIPROCAL DISCOVERY

To date, the United States has provided Defendant with 43 pages of discovery, including reports of his arrest, his rap sheet, and copies of immigration and conviction documents, and one DVD. The government moves the Court to order Defendant to provide all reciprocal discovery to which the United States is entitled under Rules 16(b) and 26.2. Rule 16(b)(2) requires Defendant to disclose to the United States all exhibits and documents which Defendant "intends to introduce as evidence in chief at the trial" and a written summary of the names, anticipated testimony, and bases for opinions of experts the defendant intends to call at trial under Rules 702, 703, and 705 of the Federal Rules of Evidence.

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CONCLUSION

For the foregoing reasons, the government respectfully requests that its motions be granted..

DATED: July 7, 2008.

Respectfully submitted,

KAREN P. HEWITT
United States Attorney

s/ William A. Hall, Jr.
WILLIAM A. HALL, JR.
Assistant United States Attorney

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Case No. 08CR1906-BEN

Plaintiff

CERTIFICATE OF SERVICE

v.

MIGUEL PEREZ-PIO,

Defendant(s).

IT IS HEREBY CERTIFIED THAT:

I, WILLIAM A. HALL, JR., am a citizen of the United States and am at least eighteen years of age. My business address is 880 Front Street, Room 6293, San Diego, California 92101-8893.

I am not a party to the above-entitled action. I have caused service of UNITED STATES' MOTION FOR FINGERPRINT EXEMPLARS AND RECIPROCAL DISCOVERY on the following parties by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

1. Sylvia A. Baez, Esq.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 7, 2008.

s/ William A. Hall, Jr.
WILLIAM A. HALL, JR.